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NOTE: This order is nonprecedential.

United States Court of Appeals
for the Federal Circuit

BOEHRINGER INGELHEIM INTERNATIONAL
GMBH and BOEHRINGER INGELHEIM
PHARMACEUTICALS, INC.,
Plaintiffs-Appellants,

v.

MYLAN PHARMACEUTICALS, INC.
and MYLAN INC.,
Defendants-Appellees.

2009-1402

Appeal from the United States District Court for the
District of New Jersey in case no. 09-CV-366, Judge Faith
S. Hochberg.

ON MOTION

Before RADER, *Chief Judge*, BRYSON and MOORE, *Circuit
Judges.*

RADER, *Chief Judge.*

O R D E R

BOEHRINGER INGELHEIM v. MYLAN PHARMA

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Boehringer Ingelheim International GmbH and Boehringer Ingelheim Pharmaceuticals, Inc. move without opposition to vacate the May 12, 2009 order of the United States District Court of the District of New Jersey in 09-CV-366 and remand for further proceedings.*

The parties previously moved to stay proceeding in this appeal pending disposition of appeal 2009-1032. In that appeal, this court recently vacated the judgment of the United States District Court for the District of Delaware that had held the underlying patent invalid and remanded for further proceedings.

In the present appeal, 2009-1402, the District Court for the District of New Jersey considered the effect of the Delaware district court's determination and granted the defendants' motion to dismiss the complaint filed by Boehringer involving the same patent, based upon issue preclusion and claim preclusion. The parties agree that due to the disposition of 2009-1032, the district court's order must be vacated and the case remanded for further proceedings.

Upon consideration thereof,

IT IS ORDERED THAT:

- (1) The motion is granted. The district court's order granting the motion to dismiss is vacated and the case is remanded for further proceedings.
- (2) Each side shall bear its own costs.

* The district court's order was signed by the district court judge on May 12, 2009 and filed by the district court on May 13, 2009.

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BOEHRINGER INGELHEIM v. MYLAN PHARMA

FOR THE COURT

AUG 2 2010

Date

/s/ Jan Horbaly

Jan Horbaly

Clerk

cc: Bruce M. Wexler, Esq.
Shannon M. Bloodworth, Esq.

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UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

By: Jinda Lagoi Date: 8/2/10

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THE FEDERAL CIRCUIT

AUG 02 2010

JAN HORBALY
CLERK

U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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